

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY

AYHAN AKCAKAYA,

Defendant below,  
Appellant,

vs.

MICHAEL SHAHAN, Director of  
DIVISION OF MOTOR VEHICLES,  
DEPARTMENT OF TRANSPORTATION,

Plaintiff below,  
Appellee.

C.A. NO. 05-06-155

**Submitted: March 17, 2009**

**Decided: March 17, 2009**

**On appeal from Division of Motor Vehicles**

**Affirmed.**

William Wilgus, Esquire, 221 East Dupont Highway, Millsboro, Delaware 19966,  
Attorney for Appellant.

Frederick Schranck, Esquire, Department of Transportation, Post Office Box 778, Dover,  
Delaware 19903-0778, Attorney for Appellee.

Trader, J.

In this civil appeal from the Division of Motor Vehicles, Department of Public Safety, I hold that it has been established by a preponderance of the evidence that the defendant was driving under the influence of alcohol. Accordingly, the hearing officer's decision to revoke the defendant's license is affirmed.

The relevant facts are as follows: In the early morning hours of April 4, 2005 in Sussex County, Delaware, Corporal Valerie Robinson's radar showed that the defendant's vehicle was traveling at a speed of 70 M.P.H. in a 50 M.P.H. zone. She stopped the defendant's vehicle and while she talked to him, she detected an odor of alcohol on his breath. At the scene, the defendant admitted to drinking two beers and Cpl. Robinson observed his eyes to be somewhat blood shot.

Cpl. Robinson then requested that the defendant perform some field coordination tests. The defendant said that he knew the alphabet and started reciting it before he was instructed on what to recite. The police officer told him to recite from letter F to the letter Z and he stated that he did not know the alphabet. On the counting test, he was instructed to recite backwards from 97 to until he was told to stop. During that test he transposed numbers 86 and 85 and Cpl. Robinson concluded that he failed the test. On the one-leg stand test, the defendant held his leg up and put it right down and he tried again and could not do it.

Based on the field tests, the defendant was taken back to Troop 5 for the administration of the breathalyzer test. The results of the test indicated a BAC of .081%.

At the hearing, Cpl. Robinson brought the breathalyzer books with her and showed the results of the tests to the defendant. When asked if he had any objection to these documents, the defendant said no. The hearing officer found that the Division had

established by a preponderance of the evidence that the defendant was driving under the influence of alcohol.

The Court's review of the administrative decision of the Division of the Motor Vehicles is limited to correcting errors of law and determines whether substantial evidence exists on the record to support both the findings of fact and conclusions of law reached by the hearing officer. *Howard v. Voshell*, 621 A.2d 804, 806 (Del. Super. Ct. 1992). Reversal of an agency's decision is warranted if the agency abused its discretion. *Barnett v. Division of Motor Vehicles*, Del. Super., 514 A.2d 1145 (1986). If there is substantial evidence in the record, the "court may not reweigh it and substitute its own judgment" for that of the agency. *Janaman v. New Castle County Board of Adjustment*, 364 A.2d 1241, 1242 (Del. Super. Ct. 1976). "The Division's understanding of what transpired is entitled to deference, since the hearing officer is in the best position to evaluate the credibility of witnesses and probative value of real evidence." *Voshell v. Attix*, 574 A.2d 264, 1990 WL 40028, at \* 2 (Del. 1990).

The only issue raised by the defendant in this appeal is that the breathalyzer evidence was improperly admitted into evidence and without it, the Division cannot establish by a preponderance of the evidence that the defendant was driving a motor vehicle under the influence of alcohol. The defendant's contention is incorrect.

Cpl. Robinson brought the required documents to the hearing and showed them to the defendant. She also offered him a chance to review the documents and he did not object to the admissibility of these documents into evidence. The police officer then requested that the documents formally be admitted into evidence.

The defendant was given an opportunity to object to the documents relating to the breathalyzer as well as its reading. The defendant's failure to object at the hearing bars any such contention on appeal. With the admission of the BAC of .081, the Division has established by a preponderance of the evidence that the defendant was driving a motor vehicle under the influence of alcohol. Therefore, the findings of the hearing officer were correct and I affirm her decision in revoking the defendant's license for a period for three months.

**IT IS SO ORDERED.**

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**Merrill C. Trader**  
**Judge**